

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RECEIVED

2007 AUG -6 A 11: 09

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND, a corporation

Plaintiff,

v.

PEGGY NESSMITH, an individual,

Defendant.

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO.:

2:07CV707-MEF

---

COMPLAINT

---

I. JURISDICTION AND VENUE

1. FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity & Deposit") is a corporation organized and existing under the laws of the State of Maryland and having its principal place of business in Baltimore, Maryland. At all relevant times hereto, Fidelity & Deposit has been duly authorized, licensed and engaged in the insurance and bonding business in this judicial district.

2. PEGGY NESSMITH ("NesSmith") is a citizen of the State of Alabama who is over the age of nineteen (19) years.

3. Jurisdiction over this matter exists pursuant to 28 U.S.C. §1332, in that it is between citizens of different states and the amount in controversy exceeds the sum of Seventy-five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

II. FACTUAL ALLEGATIONS AND CLAIM FOR RELIEF

4. At all times material to the allegations made the basis of this Complaint, Fidelity & Deposit had in full force and effect a Commercial Crime Policy (No. CCP0063294) in favor of the Field Management and Field Agents of the Northwestern Mutual Life Insurance Company and David Miller (“NMLIC”) which provides coverage, in part, for losses resulting from employee dishonesty.

5. At all times material to the allegations made the basis of this Complaint, NesSmith was employed by NMLIC.


6. During the period in which the Fidelity & Deposit’s Policy was in effect, NesSmith was engaged in a scheme to intentionally convert and misappropriate to her own use and benefit funds belonging to NMLIC.

7. In January of 2007, NMLIC submitted a formal claim to Fidelity & Deposit under the aforementioned Policy for losses it sustained as a result of certain dishonest acts and conduct of NesSmith.

8. After investigating the claim, Fidelity & Deposit made payment to NMLIC under the Policy in the amount of \$355,949.66.

9. By virtue of the equitable subrogation rights vested in Fidelity & Deposit and by virtue of an assignment executed in favor of Fidelity & Deposit by NMLIC, Fidelity & Deposit is entitled to recover from NesSmith the amount of the payment it has made under the Policy.

WHEREFORE, PREMISES CONSIDERED, Fidelity & Deposit demands judgment against NesSmith in the amount of Three Hundred Fifty –Five Thousand Nine Hundred Forty-Nine and 66/100s Dollars (\$355,949.66), plus all interest permitted by law, all costs of this action, and all other relief to which Fidelity & Deposit may be entitled.



---

BRIAN A. DODD  
J. SCOTT DICKENS  
Attorneys for Fidelity and Deposit  
Company of Maryland

OF COUNSEL:

STARNES & ATCHISON LLP  
Seventh Floor, 100 Brookwood Place  
Post Office Box 598512  
Birmingham, Alabama, 35259-8512  
(205) 868-6000

PLAINTIFF'S ADDRESS

Fidelity and Deposit Company of Maryland  
3910 Keswick Road, 5<sup>th</sup> Floor  
Post Office Box 17069  
Baltimore, Maryland 21297-1069

DEFENDANT TO BE SERVED BY SPECIAL PROCESS SERVER

Ms. Peggy NesSmith  
114 Crossgate Drive  
Elmore, Alabama 36025